

State of the Judiciary
Chief Justice Sue Bell Cobb, Supreme Court of Alabama
House Chamber and State House, Montgomery, AL
February 10, 2009

Lieutenant Governor Folsom, Speaker Hammett, members of the Leadership, the Senate, and the House, my colleagues in the Judicial Branch.

I thank the Alabama Legislature for adopting the joint resolution which authorized my delivery today of the State of the Judiciary, the second given by a Chief Justice in this Chamber since 1989. I am pleased and once again privileged to report that the Alabama Judicial System, though challenged by the economic crisis which has threatened Alabama families, businesses, and state government, is meeting its constitutional and statutory responsibilities and is a court system with "reform in its heart". First, I want to recognize many who have contributed greatly to our success this past year: My partner in court administration and court improvement, (day in and day out) is Callie Dietz, Administrative Director of Courts. All of our Directors and Assistant Directors are also here today.

Joining us today in the gallery are important members of the Court system. From the Supreme Court of Alabama: Justice Tom Parker, Justice Glenn Murdock, and our Clerk, Bob Esdale. From the Court of Criminal Appeals: Presiding Judge Kelli Wise, Judge Samuel Welch, Judge Beth Kellum, Judge Mary Windom, and its clerk, Lane Mann. From the Court of Civil Appeals: Presiding Judge Bill Thompson, Judge Tommy Bryan, and its clerk, John Wilkerson. Also in attendance today are circuit and district judges from throughout Alabama: Judge Pete Johnson, Chairman of the Chief Justice's Model Drug Court Task Force; Presiding Circuit Judge Charles Robinson of St. Clair County and the 30th Circuit; Circuit Judge John Graham of Jackson County and the 38th Judicial Circuit; District Judge Aubrey Ford of Macon County and 5th Judicial Circuit; District Judge Liles Burke of Marshall County and the 27th Judicial Circuit; Circuit Judge Al Johnson of Russell County and 26th Judicial Circuit; Circuit Judge Dan King of Jefferson County and the 10th Judicial Circuit; Retired District Judge David Breland of Morgan County and the 8th Judicial Circuit; Retired District Judge David Bibb of Lawrence County and the 36th Judicial Circuit; Retired Judge Deborah Bell Paseur of Lauderdale County and the 11th Judicial Circuit; Circuit Judge Burt Smithart of Bullock County and the 3rd Judicial Circuit; District Judge Maura Culberson of Elmore County and the 19th Judicial Circuit; Family Court Circuit Judge Anita Kelly of Montgomery County and the 15th Circuit; District Judge Sharon Yates of Montgomery County and the 15th Judicial Circuit; Circuit Judge Sibley Reynolds of Chilton County and the 19th Judicial Circuit; District Judge Jimmy Pool of Montgomery County and the 15th Judicial Circuit; and District Judge John Amari of Jefferson County and the 10th Judicial Circuit.

Also with us today are several of our circuit clerks from throughout the state: Steve Grimes, President, Circuit Clerks Association; Suzie Odom of Walker County; Mary Moore of Perry County; Jane Smith of Madison County; J. D. Snoddy of Winston County; Corinne Hurst of Lee County; Cathy Coulter of Russell County; Whit Moncrief of Autauga County; and Allen Stephenson of Butler County. Retired Federal District Magistrate Judge Delores Boyd, a

member of the Panel of Neutrals, is with us today. I would also like to recognize Mark White, President Alabama State Bar Association, and Pat Sefton, Secretary/Treasurer Alabama Defense Lawyers Association (Attending for President Helen Johnson Alford).

From Baldwin County to Madison County, from Tuscaloosa to Auburn, from Andalusia to Birmingham, from the counties of Lauderdale to Houston, each day thousands of Alabamians, families, businesses and individuals from your communities turn to our courts to resolve civil disputes, bring resolution for victims of crime, enter protection orders for battered children taken from ghastly situations, and settle important financial matters. Our doors are open and cannot be closed for any reason. We must all work together to ensure that the courts are accessible to all.

REFORM

A young man attempted to trick an oriental philosopher. As he held a small bird in his hands, he questioned the elderly gentlemen: "Oh wise one, is the bird in my hands dead or alive?" If he responded that the bird was dead, the young man would let him go free. On the other hand, if the philosopher said "he is alive," the impertinent man would crush the tiny thing. Knowing this, the philosopher replied "the fate of that bird, my son, is in your hands." The fate of greater than four million people rests in the hands of 244 circuit and district judges and 19 appellate judges and justices. We are mindful of this weighty and awesome responsibility. This is why you find in 2009 a Unified Judicial System with "reform in its heart."

Thanks to you and your willingness to recognize and honor the Court's top legislative priority of the last session, the Juvenile Justice Reform Bill of 2008 became law. Because of the leadership of Lieutenant Governor Folsom and Speaker Hammett and the tenacity of bill sponsors Senator Myron Penn and Representative Tammy Irons, the Alabama Juvenile Justice Act became a reality. We are thankful for the interbranch partnership with Governor Riley, Department of Youth Services (DYS) Director Walter Wood, and the Casey Foundation. Because of the juvenile judges and juvenile probation officers' willingness to embrace a new philosophy pursuant to Casey's Juvenile Justice Alternatives Initiative, DYS's daily population has declined forty percent. Comparing statistics from the Summer of 2007 and January 2009, eight months following the passage of the Juvenile Justice Act, the number of youth in reformatory schools has fallen nearly a third. As can be seen on the handout provided to the members of the Legislature, in May 2007 the daily population in DYS was 1,090. By January 2009 the population had fallen to 647. In fact, fewer youth were admitted to DYS in 2008 than in any year since 1995, and there were over 1,000 fewer admitted than would have been projected.

The primary reduction in commitments by our juvenile judges was in low risk offenders and technical violators. Our juvenile judges bravely chose to keep them at home and chart a new path. This, Ladies and Gentlemen of the House and Senate, is stunning! This is reform, but it is up to you whether or not the reform will be lasting. Alabama's dedicated Juvenile Judges and JPOs attended the first ever mandated Juvenile Judges Conference funded by the Casey Foundation. The new law banning the commitment of troublemakers or CHINS, children who have not committed a crime, had not even gone into effect.

However, our juvenile court officials, with reform in their hearts, bought into a data-proven concept, i.e., that locking up low-risk offenders with moderate and high risk offenders increases the chance they will re-offend – not the other way around. Reducing inappropriate commitments is allowing DYS staff, through the outstanding leadership of Walter Wood, more time and opportunity to help the more serious juvenile offenders in their care.

The result is and will be a safer Alabama. Will you, members of the House and Senate, ensure this amazing reform continues? I promised the juvenile judges and juvenile probation officers that I would urge you to take a significant portion of the savings created by reducing inappropriate commitments to DYS and reallocate those funds to community-based programs, such as centers focusing on the CITY Program, day treatment, evening reporting, and drug and alcohol treatment. These reforms will be sustained with your help. I plead with you to not let these monumental changes to evaporate because of the current fiscal crisis. Retired Morgan County District Judge David Breland, with the help of an Alabama Power Foundation grant, is traveling county to county across this great state and bringing all the juvenile justice partners, stakeholders, and the local children policy councils together. The challenges of at-risk children will only be solved through state/local partnering, public/private partnering, and all of us working together to help parents do a better job with their children.

This year, through the Alabama Court Improvement Program, Dependency Caseflow Management Reunion Workshops were conducted involving twenty-six county teams comprised of juvenile court judges and court and Department of Human Resources staff. These courts demonstrated significant progress made in case management. This meant that the cases involving abused and neglected children were handled more quickly. There were 5,914 children in foster care as of February 10, 2008. As of February 10, 2009, there are 5,564 children in foster care. We must always remember that a month to an adult usually goes by swiftly, but a month to a child can seem an eternity.

What we have managed to accomplish with the continued help of the Legislature and the Executive Branch in the juvenile justice arena can be similarly accomplished by our judges for the adult system. Judge Pete Johnson, chair of the Chief Justice's Model Drug Court Task Force continues to work tirelessly to expand these important problem-solving courts. Since January 2006 when we had 18 drug courts in Alabama, drug courts have grown. Today, we have 43 adult model drug courts and seven juvenile and family drug courts. Five counties are in the final stages of beginning their drug courts and should be in operation within the next three months. I hope you will help us continue this amazing progress in two ways. First, I ask that you encourage local officials in the remaining 19 counties to be a part of this reform effort. Second, help us develop more evidenced-based substance abuse treatment programs. Drug courts will never be truly successful without adequate quality drug and alcohol treatment. My understanding from the Department of Mental Health is that we still have 22 counties without even an outpatient program. These programs would be a godsend to both the judges and local DHR, as a majority of the children in foster care are there because of their parent's addiction.

A court system with reform in its heart will focus on more "individualized justice" which requires more time spent by our judges in the courtroom. Why are they willing to do this? Because individualized justice makes the public safer. Examples are drug courts, mental health

courts, and dedicated domestic violence dockets. We also know that the expansion and improvement of community corrections is imperative. The Pew Charitable Trusts, Vera Institute of Justice, and the Criminal Justice Institute are providing significant technical assistance and local grants to Lawrence, Jefferson, Marshall, and Montgomery Counties.

Our goal is to establish Model-Mentor-Community Punishment programs to eliminate the duplication and holes in county sentencing options for non-violent offenders. We want to appropriately sentence non-violent criminal offenders to community-based programs, reserving expensive prison cells for violent criminals, thereby increasing public safety while saving tax dollars. My thanks to Retired Judge Joe Colquitt, Lynda Flynt, Rosa Davis and the staff of the Alabama Sentencing Commission for their thoughtful, careful approach to sentencing issues. One day Alabama will have true "truth-in-sentencing." Our goal is to close the "revolving door" of career criminals by our judges doing, as I reported to your last year, the hard work of fixing people rather than the easy work of filling prisons. No one is going to accuse the courts of succumbing to the "tyranny of low expectations."

REFORM IN JUDICIAL ADMINISTRATION

As I mentioned last year, initially because of numerous federal technology grants, Alabama is one of a handful of states with statewide e-filing in civil cases. Here are some of our other accomplishments in the past year:

- AlaCourt, our internet-based filing and docket review system, had over 844,000 attorney filings and 2,400 new members;
- The AOC mainframe had over 1 million transactions per day;
- The AOC Traffic Call Center answered over 180,000 calls and explained or collected money on almost 614,000 e-tickets and 371,000 paper tickets;
- Our Child Support Center handled almost 113,000 calls and collected over \$165 million for custodial parents;
- Over \$2.4 million was collected in old fines and court costs through the income tax intercept program. This was an increase of more than \$900,000, or 55 percent, since last year;
- A new Case and Juror Management Section within our legal Division has been reinstated and will be working with ten pilot counties;
- We have completed the process for courtroom interpreter certification, and we are now part of the national consortium through the National Center for State Courts; and
- We have implemented a new certification program for district clerks and magistrates modeled after our very successful certification program for

municipal court clerks.

Following a Conference of Chief Justices meeting, I asked Presiding Judge Scott Vowell of Jefferson County to chair a committee to study the concept of Business Courts. This specialized court exists in other states, and data shows that the Business Court can resolve complicated business disputes much more quickly and inexpensively, which is a good thing for business. Their report will be due soon and we will be soliciting input from everyone on this issue. This great success is the result of true teamwork of Callie Dietz, her dedicated AOC staff, and our trial judges, clerks, JPOs and court staff. To them I am most grateful.

REFORM IN SUPREME COURT

Your Supreme Court is also hard at work. Our pending caseload was the lowest it has been in four years. During the 2007-2008 October and Summer terms of the Supreme Court, 1,695 cases were filed and 1,753 disposed. This equates to a thru-put rate of 103 percent. Transparency and accountability are crucial. The Supreme Court believes that "Justice delayed is justice denied." Consequently, for the first time in history, the Court unanimously voted to release statistics regarding our pending cases and the number and average age of each justice's total dispositions. These statistics will be released at the conclusion of our court year on September 30 and each year thereafter. Additionally, our appellate mediation program administered by the Supreme Court Clerk's Office has consistently settled approximately 50% of cases referred to the program. The Alabama Court of Criminal Appeals continues to have the highest caseload per judge of all intermediate appellate courts in the nation. The Criminal Appeals Court with Presiding Judge Kelli Wise, and the Alabama Court of Civil Appeals with Presiding Judge Bill Thompson continue to expeditiously dispose of their cases. The Supreme Court's ability to meet our responsibility is due in great part to the Court of Civil Appeals handling of those cases deflected from the Supreme Court. They have our thanks.

BUDGETARY CONCERNS

It goes without saying that our court family is concerned about our present budget and the budget for 2010. Of course, we recognize our beloved state and nation are going through economic turmoil and sobering financial hardship for families and government. I understand that there are forty-one states with current budget deficits. But let there be no mistake: the Judiciary is doing their part. With the cuts imposed by the Deficit Prevention Plan, we were poised to lay off approximately eighty percent of all projected state layoffs in all entities receiving funding from the General Fund. Of the 147 projected layoffs, 114 were ours. Thankfully, I have been advised to postpone those layoffs in order to determine the assistance which may result from the federal economic stimulus plan. The court system has no programs to cut; our "programs" – if you want to mistakenly call them that – are civil and criminal jury trials, divorce court, small claims court, etc. The judiciary is not a state agency. It is the third branch of our government and is the last refuge of democracy.

LEGISLATIVE AGENDA

In addition to our budget requirements which are necessary to provide access to our court system

for your constituents, I urge you to consider the following bills on our legislative agenda:

- First and foremost, our top 2009 legislative priority, as a result of our interbranch meetings, is the Alabama Indigent Defense Commission Bill which is sponsored by Chairman John Knight and Chairman Roger Bedford. This bill establishes state-level oversight of the indigent defense system by an Indigent Defense Commission, which will ensure quality legal representation, as constitutionally required, and fiscal and budgetary accountability, without sacrificing or jeopardizing the quality of representation offered state-wide. It brings Alabama in line with forty-two other states that operate with some type of state oversight for indigent defense services. It establishes a state-level Indigent Defense Commission to develop guidelines and standards - relating to attorney training, experience, and caseload management. It will guarantee uniform, quality representation around the state. It applies also to attorneys appointed to represent juveniles in dependency and delinquency cases. The bottom line is that justice should be the same without regard to a person's economic circumstances; simultaneously, we must ensure that we are not wasting a single tax dollar.
- The Alabama Drug Offender Accountability Bill, sponsored by Representative Marcel Black, which is based on the Model Court Act, will be introduced shortly. The courts of Alabama, with your help, will continue to expand and grow drug courts in the adult and juvenile courts to give drug dependent Alabamians the tools they need to live as drug-free productive citizens.
- The Judicial Experience Bill, sponsored by Rep. Paul DeMarco and Sen. Roger Bedford. This bill would require persons who wish to be a member of the judiciary to be licensed in the practice of law for a combined total of three, five, or ten years for the district, circuit or appellate courts respectively. The years could be cumulative from Alabama and another jurisdiction or cumulative years of law practice and years on the bench.
- The Expungement Bill, sponsored by Rep. Chris England. At the present time Alabama has no clear mechanism to expunge a non-violent criminal record. In some cases, justice is best served by wiping the slate clean. This bill is supported by Pardons and Paroles Board Chair Bill Wynn. I urge your consideration of this measure.
- A local bill creating an additional circuit judgeship for Madison County. Madison County currently has the highest caseload per judge in the state. With the upcoming base re-alignment and closure the county is expected to continue to grow. Forty-two active judges and 26 retired judges have been assigned to take cases to help alleviate the state's largest caseload in our fourth largest county. Madison has not had an additional judgeship

added in over twenty-five years. In addition, over 90 retired and active judges have been assigned to serve as special circuit and district judges in counties throughout the state - filling in where judges recuse, retired or were sick. The problem with securing extra funding for new judgeships demonstrates yet again a need for a different kind of reform -- a possible realignment of judicial resources. We must find a way to cure the unjustifiable disparity in caseloads from judge to judge and county to county.

- The Law Library Bill sponsored by Representative Marc Keahey and Senator Roger Bedford. Many of the circuit courts have county law library funds that allow the presiding circuit judge to authorize the use of the monies for certain designated purposes. Historically much of the money was used to purchase law books. With the advances in technology and computer-assisted legal research and the decrease in the need to purchase books, this would allow these funds to be put to use for local court needs.

Countless times in the history of our state and country, communications between our branches have been non-existent or strained as each seeks to define the limits of our constitutional authority. The system of "checks and balances" that underlies this tension is arguably the most brilliant concept adopted by our framers. But achieving the equilibrium they envisioned is difficult at best. I pledge to you on behalf of Alabama's talented and dedicated judges and court officials, protecting that equilibrium is one of our top priorities. Sometimes the Judiciary may come under attack for fulfilling its role in this system of checks and balances. Criticism of a judicial decision is fair play in our democracy; likewise so is criticism of the lack of timeliness. However, as Retired Justice Sandra Day O'Connor recently observed, criticizing the courts for fulfilling its constitutional duties is dangerous ground. We may strongly disagree about judicial decisions, but we must guard against undermining the strength and integrity of our judicial system. As Woodrow Wilson once wrote, our government "Keeps its promises, or does not keep them, in the courts." There is simply more at stake here than the controversial issues of the day.

In conclusion, I would like to make it absolutely clear that the reforms that have taken place in the past two years and the resolution of 1,308,388 criminal and civil cases in Alabama could not have occurred without the most important collaboration - the partnership between the three branches of government. The people in this room, the People's House, have stepped up to the plate and provided the Judiciary with what was needed in order for our great judges and court personnel to do their constitutionally-mandated jobs. We know that this year and the next may be the most challenging in our professional careers. We also know that the Alabama Legislature recognizes that when people have nowhere else to turn - they turn to the courts, whether that person be a battered woman, -a frustrated landlord, an injured worker, a devastated crime victim, a mentally ill son or daughter, a defrauded businessman, a drug-addicted offender, or an upset family struggling after a parent's death.

The people in this room, working with the Unified Court System, have time after time, session after session, provided us the necessary personnel, facilities, and technology to do our important

work. We look to you now, as you are required to make very difficult choices during this session, and we are confident that you will provide your court system with the funding necessary to continue the reforms which we have begun. The results of these reforms include our communities are becoming safer and the lives of children are being improved. All the while, tax dollars are being saved. That is reform we all can believe in.

I thank you and God bless the Great State of Alabama and each of you.

